

Attorney Docket No. UMBP:126US
U.S. Patent Application No.: 10/604,580
Reply to Office Action of June 1, 2005
Date: August 3, 2005

Remarks

The § 112, second paragraph of Claims 21-22

The Examiner rejected Claims 21-22 under 35 U.S.C. § 112, second paragraph as being indefinite for failing to particularly point out and distinctly claim the subject matter of the invention. Specifically, the Examiner stated that in Claim 21, line 3 and Claim 22, line 2 the limitation “said elastic band” is inconsistent with the limitation “at least one elastic band” of Claim 1 from which Claims 21 and 22 depend. In addition, the Examiner requested that this inconsistency be removed from the non-elected claims.

Applicant has amended pending Claims 21 and 22 to distinctly claim the limitation “at least one” elastic band by inserting this limitation into those claims. In addition, Applicant amended withdrawn Claims 4, 5, 8, 11, and 16-18 by inserting the limitation “at least one” elastic band in each of those claims. Applicant has also amended withdrawn Claim 14, which depends from Claim 13, to more clearly claim a pair of elastic bands. In light of these amendments, Applicant respectfully requests removal of the rejections of Claims 21-22 under § 112, second paragraph

The § 102 (b) Rejections of Claims 1, 20, and 23

The Examiner has rejected claims 1, 20, and 23 under 35 U.S.C. § 102 (b) as anticipated by U.S. Patent No. 4,826,042 to Vujovich (“Vujovich” or the ‘042 patent”). Applicant has amended independent Claims 1 and 23 and respectfully traverses the rejections of those claims. Applicant respectfully requests reconsideration.

“A claim is anticipated only if each and every element as set forth in the claims is found, either expressly or inherently described in a single prior art reference.” *Vandergaal Bros. v. Union Oil of California*, 814 F.2d 628, 631; 2 U.S.P.Q.2d 1051, 1053 (Fed. Cir. 1987). MPEP § 2131. (Emphasis added.) Applicant respectfully traverses the rejection of amended independent Claims 1 and 23 as anticipated by the ‘042 patent as the ‘042 patent fails to disclose all the limitations of Claims 1 and 23 as set forth in those claims. Specifically, Applicant has amended Claims 1 and 23 to add the limitation of a channel positioned on the perimeter of the first end

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cap. Support for these amendments is found in paragraph 0035 of the instant application describing “elastic band 18 circumscrib[ing] a channel in the two end caps”. This also seen in Figure 2 which is a cross-sectional view of the claimed case showing how elastic cord circumscribes the perimeter of the case, including both end caps within channel 26.

In contrast, the ‘042 patent depicts the elastic band(s) as urging or biasing only one end of the razor blade case into the case housing. Figures 2, 3, 5, 6, and 9 clearly show either one (Figures 5 and 6) or two band(s) that surround one end cap 12 or 112 but not the second end cap 60 or 160. Applicant courteously points out that channels 31 and 36 or 131 and 136 for the elastic band(s) in the ‘042 patent do not extend to the fixed end caps 60 or 160. In contrast, as noted above, in the instant application, channel 26 extends into both end caps as channels 26' and 26" to allow the elastic band to extend around the whole perimeter of the claimed case. Because the ‘042 patent fails to disclose a case in which both end caps have a channel proximate one of their perimeters, the ‘042 patent fails to disclose each element of amended independent Claims 1 and 23 and therefore fails as a reference under §102 (b). Applicant respectfully requests reconsideration.

Claim 20 depends from Claim 1 and thus incorporates all the limitations of that claim. Because, as discussed above, the ‘042 patent fails to anticipate all the elements of Claim 1, it also fails to anticipate Claim 20. Applicant respectfully requests the removal of the rejection of Claims 20 and passage to allowance of that claim.

The Objections of Claims 21 and 22

Although the Examiner made no specific remarks concerning Claims 21 and 22, Page 1 of the current Office Action states that Claims 21 and 22 are objected to. Applicant assumes that Claims 21 and 22 are objected to on the grounds that they depend from a rejected claim but would be allowable if rewritten to incorporate the limitations of the base claim, Claim 1 and any intervening claims. On that basis, Applicant respectfully traverses the objections to Claims 21 and 22 and requests reconsideration.

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As noted above, Applicant has amended base Claim 1 to overcome the rejection of Claim 1 under § 102 (b) as anticipated by the '042 patent. Applicant respectfully submits that in light of the amendment to Claim 1 and the accompanying Remarks, the rejection of that claim should be removed which thereby removes the objections to Claims 21 and 22. Applicant respectfully requests reconsideration and passage to allowance of Claims 21 and 22.

Conclusion

Applicant respectfully submits that the present application is now in condition for allowance, which action is courteously requested. The Examiner is invited and encouraged to contact the undersigned attorney of record if such contact will facilitate an efficient examination and allowance of the application.

Respectfully yours,



C. Richard Lohrman
Registration No. 46,878
ATTORNEY FOR APPLICANT
Simpson & Simpson PLLC
5555 Main Street
Williamsville, NY 14221
Phone: (716) 626-1564
Fax: (716) 626-0366

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